

AMENDED IN ASSEMBLY JANUARY 4, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 687**

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**Introduced by Assembly Member Wilk**

February 25, 2015

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An act to amend Section 1671 of the Civil Code, relating to contracts.

LEGISLATIVE COUNSEL'S DIGEST

AB 687, as amended, Wilk. Contracts: liquidated damages.

Existing law establishes the general presumption that a contractual provision liquidating the damages for the breach of a contract is valid unless the party seeking to invalidate the provision establishes that the provision was unreasonable under the circumstances existing at the time the contract was made. Existing law excepts from the presumption certain contracts, including those for damages that are to be recovered from a party to a lease of a dwelling.

~~This bill would provide that if parties to a pending action stipulate for settlement of an action, as specified, a provision of the stipulation liquidating damages for breach of the stipulation is valid unless the party seeking to invalidate the liquidated damages provision establishes that the amount of liquidated damages exceeds the damages, interest, recoverable costs, and reasonable attorney's fees sought in the action.~~

*This bill would require a court, in entering a judgment pursuant to a written settlement agreement between a creditor and a debtor, to consider the amounts sought in the litigation in determining the reasonableness of the amounts sought pursuant to the settlement agreement. The bill would also require a party seeking to enforce a settlement agreement to comply with specified evidentiary requirements.*

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1671 of the Civil Code is amended to  
2     read:  
3     1671. (a) This section does not apply in any case where another  
4     statute expressly applicable to the contract prescribes the rules or  
5     standard for determining the validity of a provision in the contract  
6     liquidating the damages for the breach of the contract.  
7     (b) Except as provided in subdivision (c), a provision in a  
8     contract liquidating the damages for the breach of the contract is  
9     valid unless the party seeking to invalidate the provision establishes  
10    that the provision was unreasonable under the circumstances  
11    existing at the time the contract was made.  
12    (c) The validity of a liquidated damages provision shall be  
13    determined under subdivision (d) and not under subdivision (b)  
14    where the liquidated damages are sought to be recovered from  
15    either:  
16    (1) A party to a contract for the retail purchase, or rental, by  
17    such party of personal property or services, primarily for the party's  
18    personal, family, or household purposes; or  
19    (2) A party to a lease of real property for use as a dwelling by  
20    the party or those dependent upon the party for support.  
21    (d) In the cases described in subdivision (c), a provision in a  
22    contract liquidating damages for the breach of the contract is void  
23    except that the parties to such a contract may agree therein upon  
24    an amount which shall be presumed to be the amount of damage  
25    sustained by a breach thereof, when, from the nature of the case,  
26    it would be impracticable or extremely difficult to fix the actual  
27    damage.  
28    ~~(e) Notwithstanding subdivisions (c) and (d), if parties to a~~  
29    ~~pending action stipulate for settlement of an action, either in a~~  
30    ~~signed writing outside the court's presence or orally before the~~  
31    ~~court, a provision of the stipulation liquidating damages for breach~~  
32    ~~of the stipulation is valid unless the party seeking to invalidate the~~  
33    ~~liquidated damages provision establishes that the amount of~~  
34    ~~liquidated damages exceeds the damages, interest, recoverable~~  
35    ~~costs, and reasonable attorney's fees sought in the action.~~

1     (e) In entering a judgment pursuant to a written settlement  
2     agreement entered into between a creditor and a debtor pursuant  
3     to Section 664.6 of the Code of Civil Procedure, the court shall  
4     consider the amounts sought in the litigation in determining the  
5     reasonableness of the amounts sought pursuant to the settlement  
6     agreement. The party seeking to enforce the settlement agreement  
7     shall comply with the evidentiary requirements of subdivision (a),  
8     (b), (c), or (e) of Section 585 of the Code of Civil Procedure, as  
9     applicable.

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